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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Clites

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SUMMARY

- During a state of emergency declared by the Governor, requires certain health plan issuers and the Medicaid program to cover a 90-day supply of certain prescribed drugs dispensed by a pharmacist as authorized under current law.
- Applies to contraceptives or maintenance drugs that are taken on a regular basis to (1) treat a chronic condition or (2) prevent disease.
- Does not apply to controlled substances or prescriptions that say “dispense as written.”
- Prohibits copayments or other cost sharing for those drugs in an amount that is proportionally greater than the cost sharing for a standard supply of the drugs.
- Specifies that the coverage requirement does not (1) apply to noncovered drugs or (2) prohibit cost sharing for the covered drugs.
- Clarifies that the coverage requirement also applies to health benefit plans in effect on the bill’s effective date and applies to the current state of emergency related to the COVID-19 outbreak.
- Declares that the bill will take immediate effect as an emergency measure necessary for patients to minimize their exposure to COVID-19.

DETAILED ANALYSIS

Overview

During a declared emergency, the bill requires certain health plan issuers and the Medicaid program to cover a prescribed 90-day supply of a covered drug dispensed in

accordance with current law.¹ Current law permits a pharmacist to dispense a prescription drug in an amount different from that specified in a prescription under certain circumstances. First, the prescription must authorize refills, and the total amount of the drug that can be dispensed by filling or refilling the prescription cannot exceed a 90-day supply. Second, the following conditions must be met:

- The different dispensed amount does not exceed the total amount of the drug that would be dispensed under the prescription;
- The prescription is (1) a maintenance drug to be taken on a recurring basis to treat a chronic condition or to prevent disease or (2) a contraceptive;
- The prescription is not for a controlled substance;
- If the prescription is for a maintenance drug, the patient has used an initial 30-day supply, or a 90-day supply has previously been prescribed to the patient, and the pharmacist determines after consulting with the patient that the drug has stabilized the patient's condition;
- The prescriber did not write "dispense as written" on the prescription or otherwise specify that the amount of the drug dispensed cannot vary from the prescription;
- In the pharmacist's professional judgment after consulting with the patient, dispensing the drug in a different amount is appropriate for the patient.²

Coverage requirement

During a state of emergency declared by the Governor in an executive order, the bill requires certain health plan issuers and the Medicaid program to cover a 90-day supply of covered drugs that are dispensed by a pharmacist in accordance with the requirements described above. The coverage requirement applies to health benefit plans that provide coverage for prescription drugs (not including limited types of coverage such as specified disease, vision, or supplemental insurance).³ It also applies to the Medicaid program (both fee-for-service and Medicaid managed care).⁴

The bill does not:

- Require a health benefit plan or the Medicaid program to cover a drug that is not already covered; or

¹ R.C. 3902.51, 5164.7516, and 5167.12.

² R.C. 4729.40, not in the bill.

³ R.C. 3902.50 and 3902.51.

⁴ R.C. 5167.7516 and 5167.12.

- Prohibit a health benefit plan or the Medicaid program from imposing a cost-sharing requirement for the 90-day supply of the drug.⁵

Cost sharing

The bill prohibits a health plan issuer from imposing any cost-sharing requirement for the 90-day supply of the drug that is proportionally greater than the cost-sharing requirement for a standard supply of the drug under the health benefit plan. “Cost sharing” means the cost to a covered individual under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense. The cost-sharing requirement for the 90-day supply under the Medicaid program cannot be greater than the cost-sharing requirement for the drug established by the Department under current law.⁶

Effective date

The bill takes immediate effect as an emergency measure necessary to provide patients with access to necessary medications while minimizing their exposure to COVID-19.

Application to existing health benefit plans

The bill’s provisions apply to health benefit plans issued, amended, or renewed on or after the bill’s effective date as well as those in effect on the bill’s effective date.⁷ Its provisions also apply to the COVID-19 state of emergency declared by Executive Order 2020-01D, issued on March 9, 2020, to protect the well-being of Ohio citizens from the effects of COVID-19.⁸ (See **COMMENT** below.)

COMMENT

Article I of the U.S. Constitution and Article II, Section 28 of the Ohio Constitution prohibit the General Assembly from adopting laws that impair contractual obligations. These clauses prohibit a “substantial” impairment of contractual obligations unless (1) the state can justify the impairment on the basis of an overriding public interest and (2) the impairing measure is appropriately tailored to serve that interest.⁹ If challenged, it is unclear whether a court will find that the bill’s application to existing health benefit plans due to the COVID-19 outbreak is a constitutional impairment of existing contracts. Only a court may determine whether a law that impairs contractual obligations is constitutional.

⁵ R.C. 3902.51(A) and (C) and 5164.7516(B) and (D).

⁶ R.C. 3902.51(B), 5164.7516(C), and 3902.50(A); R.C. 5162.20, not in the bill.

⁷ Section 3.

⁸ Sections 3 and 4.

⁹ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216 (2003).

HISTORY

Action	Date
Introduced	03-23-20
